IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

RSA.No. 734 of 2007()

AS.121/2006 of DISTRICT COURT, THALASSERY
OS.444/1996 of MUNSIF COURT, KUTHUPARAMBA
(IA 905/98)

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APPELLANTS/APPELLANTS/DEFENDANTS 4 & 8

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1. PALLIPATH ABDUL MAJEED, S/O.MARIYUMMA,
   PALLIPATH HOUSE, KOLARI AMSOM, MANNUR DESOM,
   PORORA.PO, MATTANNUR VIA, THALASSERY TALUK.

2. PALLIPATH ABUBACKER SIDDIQUE,
   S/O.MARIYUMMA, RESIDING -DO-

BY ADV. SRI.CIBI THOMAS

RESPONDENTS: RESPONDENTS/PLAINTIFF & DEFENDANTS 1 TO 3&5,6,7&9

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1. PALLIPPATH MUHAMMED KASIM,
   S/O.MARIYUMMA, PALLIPATH HOUSE,
   KOLARI AMSOM, MANNUR DESOM, PORORA P.O,
   MATTANNUR VIA, THALASSERY TALUK.

2. PALLIPPATH MARIYUMMA, W/O.ABDUHAJI,
   PALLIPATH HOUSE, KOLARI AMSOM, MANNUR DESOM,
   PORORA PO, MATTANNUR VIA, THALASSERY, NOW
   RESIDING AT C/O.P.MUHAMMED, MAJESTIC VILLA,
   MANNA, TALIPARAMBA P.O

3. PALLIPATH KUNHAMINA UMMA, D/O.MARIYUMMA,
   ZAMEERA MANZIL, NEAR KAMALIYA UP SCHOOL,
   IRIKKUR AMSOM DESOM, IRIKKOOR P.O

4. PALLIPATH AYISUMMA, D/O.MARIYUMMA,
   PALLIPATH HOUSE, KOLARI AMSOM,
   MANNUR DESOM, PORORA PO, MATTANNUR VIA,
   THALASSERY TALUK.

5. PALLIPATH ABDUL AZEEZ,
   S/O.MARIYUMMA, TEACHER,
   PUTHIYANGADI JAMAYATH HIGH SCHOOL,
   MADAYI PO, THALASSERY TALUK.

6. PALLIPATH ZAKEENA, JAVADA MANZIL,
PATTANNUR AMSOM, KOORARI DESOM,
IRIKKOOR, THALASSERY TALUK.

7. PALLIPPATH SHAREEFA, D/O.MARIYUMMA,
SAMEERA MANZIL, KAMALIYA UP SCHOOL,
IRIKKOOR AMSOM DESOM, IRIKKOOR PO,
THALASSERY TALUK.

8. PALLIPPATH MAMMU @ MUHAMMED,
S/O.MARIYUMMA, MAJESTIC VILLA,
AGRICULTURIST, MANNA, TALIPARAMBA PO.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A. NO. 734 OF 2007

Dated this the 17th day of September, 2007

J U D G M E N T

Defendants 4 and 8 in OS 444/1996 on the file of Munsiff court, Koothuparamba are the appellants. They were challenging the final decree passed by the trial court and modified by the first appellate court in AS 121/06 . As per the final decree, trial court allotted the shares in accordance with Ext.C7 plan. Towards equilisation of shares, 8th respondent/2nd appellant was directed to pay the owelty to petitioner and respondents 2, 3, 4, 5, 6, 7 and 9 in the final decree. Appellants challenged the allotment and the final decree before District court, Thalassery in A.S. 121 of 2006. The objections raised before the first appellate court were that first appellant does not have a residential house and the property allotted is not fit or convenient to construct a residential house as plot C allotted by the trial court is not adequate to construct a house and no way is available to the plot and therefore first appellant is to be allotted some other plot. The second appellant contended that value of the house fixed by the trial court is excessive and therefore the owelty amount directed to be paid is

excessive and for these reasons the final decree is to be set aside.

2. Learned District Judge found that the objection with regard to plot C allotted to the first appellant was that it does not have a proper shape and is not sufficient to construct a building. Learned District Judge therefore modified the allotment. Instead of plot J, which was originally allotted to first defendant, plot C was allotted and instead of plot I, which was originally allotted to the sixth defendant, plot J was allotted to the sixth defendant. Instead of plot C, plot I was allotted to the first appellant.

3. Learned counsel appearing for appellants argued that plot I is having only a width of 11 metres and there is no way available to that plot and therefore the allotment is not just or proper. It was further argued that except first appellant all others have residential houses of their own and therefore the allotment is to be set aside. It was also argued that plot I is not fit enough to construct a house. The judgment of the first appellate court shows that plot I now allotted to the first appellant is fit for construction of the building. That factual finding cannot be interfered. Therefore, for the reason that plot I is not fit to construct a residential building, allotment cannot be interfered.

4. The objection with regard to absence of way to plot I is not also sustainable. First appellate court has modified Ext.C7 plan by providing ways as plot D2 and D3. As per the original plan, the only way provided by the Commissioner was plot D1. Plot D3 is a way provided by the first appellate court from the western Mattannur-Mannur public road and is carved out from plot H to plot I. Therefore the grievance that there is no way to plot I is not sustainable.

The only other objection is that value of the house allotted to the second appellant is excessive. That is also a factual finding entered into by the courts below and cannot be interfered in exercise of the power of this court under Section 100 of Code of Civil Procedure. There is no substantial question of law involved in the appeal.

Appeal fails and it is accordingly dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007